HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.24942 OF 2006

Between:

Union of India and another

. . .Petitioners

AND

General Manager and Authorized Officer,
Allahabad Bank, Kolkata
and others

. . .Respondents

:: ORDER ::

Counsel for the Petitioners : Shri A.Rajashekar Reddy

1st December, 2006

-

PER G.S.SINGHVI, CJ

This is a petition by Union of India and another for quashing notice dated 04.10.2006 issued by General Manager and Authorised Officer, Allahabad Bank, Zonal Office, Kolkata (respondent No.1) for sale of the property belonging to respondent No.2 – M/s.Rock Copco Limited.

The main ground on which the petitioners have questioned the impugned notice is that in view of the provisions contained in Section 62 of the Customs Act, 1962 (for short, 'the 1962 Act'), respondent No.1 and other officers of Allahabad Bank (for short, 'the bank') cannot sell the goods and property of respondent No.2 without seeking permission of the competent authority of the Customs Department. Reliance has also been placed on Sections 68 and 71 of the 1962 Act and it has been averred that the authorities of the bank do not have the jurisdiction to take proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the 2002 Act').

We have heard Shri A.Rajashekar Reddy, learned Assistant Solicitor General and perused the record.

For the reasons best known to them, the petitioners have not impleaded the bank as party to the writ petition despite the fact that the impugned notice has been issued by respondent No.2 on behalf of the bank and not on his own. Respondent No.2 is an officer of the bank and not the bank itself which has a juridical personality and can sue and be sued in its own name. In a matter like the present one, non-

impleadment of the bank has to be treated as fatal to the cause of the petitioners – **Ranjit Mal v. General Manager, Northern Railway**[1]**.**

There is another reason for our disinclination to entertain the writ petition. The petitioners have neither questioned the legality of notices issued on behalf of the bank under Section 13(2) and (4) of the 2002 Act nor any prayer has been made for quashing the same. The auction notice issued by respondent No.1 is only a consequential step taken by the bank in furtherance of its decision taken by the bank to realize its dues by putting the mortgaged property to auction. In our view, in the absence of a specific prayer for quashing the notices issued under Section 13 of the 2002 Act, the consequential action cannot be nullified.

For the reasons aforestated, the writ petition is dismissed. However, liberty is given to the petitioners to file fresh petition by impleading the bank as party and by making prayer for quashing the proceedings initiated by the bank under the 2002 Act. It will also be open to the petitioners to reiterate their prayer for quashing the impugned notice as well as the result of auction, if any held by the bank.

As a sequel to dismissal of the main petition, W.P.M.P.No.31935 of 2006 filed by the petitioners for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

Date: 01.12.2006

kvni

[1] AIR 1977 SC 1701